IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 350/2004

Shri P.E.E. Dourado, Proprietor
of M/s. Dillan Earthmovers, having
his Office at R-12, Souza Enclave,
Near K.T.C. Bus Stand, Margao, Goa. ..... Petitioner.

V/s.

Shri Vincent Da Costa, Vincent D'Costa
or Vicente Alexandrino Costa or Vincente
Alexander da Costa, Proprietor
M/s. Star Earth Movers, having his
Office at SO-12, Baboy Commerce Centre,
Second Floor, Near Hari Mandir,
Margao, Goa. ..... Respondent.

Mr. Nitin Sardessai, Advocate for the petitioner.

Mr. Joseph Rodricks and Ms. Melvina Fernandes, Advocates for the respondent.

CORAM : B.H. MARLAPALLE, J.

DATE : OCTOBER 21, 2004.

ORAL JUDGMET :

Heard Mr. Nitin Sardessai, the learned Advocate for the respondent and Mr. Joseph Rodricks and Ms. Melvina Fernandes, the learned Advocates for the respondent. Rule. With the consent of the parties, the Rule is taken up for hearing forthwith.

2. The application moved at Exhibit-24 has been rejected by the

learned Civil Judge, Sr. Division at Margao on 21.6.2004 and by the said application filed by the defendant, a permission was sought to cross examine PW.1 in Special Civil Suit No.2/2002.

3. The trial Court, in the impugned Order, noted that on 25.11.2003, the examination-in-chief of PW.1 was completed and the learned Advocate for the defendant was present in the Court till 12 noon and when his turn came to commence the cross examination, he was not present in the Court and subsequently, the Court was informed that the said learned Advocate had gone to the District Court at 12.30. The trial Court has noted that the date was fixed with the convenience of the Advocate and the Advocate for the defendant was busy in the District Court, which could not be a reason for granting adjournment. The trial Court, therefore, marked the Advocate for the defendant as absent and fixed the plaintiff's case for further evidence. It was under these circumstances, the application at Exhibit-24 was filed by the defendant.

4. The trial Court was of the view that inspite of the date having been given as per the convenience of the learned Advocates for the respective parties and when the evidence of the plaintiff had already started in the presence of the Advocate for the defendant, it was necessary for him to be available to continue with the cross examination of PW.1. Taking any lenient view in such matters would affect the discipline of the Courts. There can be no two opinions that

the trial Court was not at fault, and the Advocate for the defendant was to be blamed. However, the defendant ought not suffer the implications of PW.1 not being available for cross examination and the application at Exhibit-24 was submitted on the very next day. In the interest of justice, it is necessary to consider the irreparable loss that may cause to the litigant and in such cases it is expedient that such applications, if made at the earliest occasion possible, should be allowed by imposing appropriate costs, so that the justice delivery system is not derailed and it does not result in miscarriage of justice.

5. This is a fit case to allow the application at Exhibit-24 by imposing costs, to be borne by the learned Advocate for the defendant. It is to be noted that by order dated 5.8.2004, this Court has already stayed the further proceedings in Special Civil Suit No.2/2002 and it is not in the interest of the plaintiff as well to keep the said proceedings pending for any longer. Hence, the petition is allowed and the impugned Order dated 21st June, 2004 passed by the learned Civil Judge, Sr. Division, Margao in Special Civil Suit No.2/2002 is, hereby, quashed and set aside and the application at Exhibit-24 stands allowed, however, by imposing costs, quantified at Rs. 3,000/-. The costs to be remitted by the learned Advocate for the defendant within one week from today with the trial Court. Rule is made absolute accordingly.

B.H. MARLAPALLE, J.